

A hearing was held on Wednesday, June 10, 2020, in room 717 at the State Personnel Department in Montgomery, Alabama. Noel Barnes, Esq.; Erin Dunagan, Esq.; and Michelle Cone, Esq. appeared as counsel on behalf of ALEA. John D. Norris, Esq. appeared as counsel on behalf of Champion.

ALEA introduced into evidence 16 exhibits consecutively marked ALEA Exhibits 1-16. Champion did not offer any additional exhibits. Champion's ALEA personnel file located at the Alabama State Personnel Department is included in the record as evidence in this cause.

ALEA called the following individuals as witnesses during the hearing:

- (1) Chief Susanna K. Capps, Department of Public Safety, Highway Patrol;
and
- (2) Stan Goolsby, Director ALEA Personnel.

Champion did not call any witnesses and did not testify on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Champion began State employment in June 2007 as an Alabama State Trooper ("Trooper") when he was hired by the Alabama Department of Public Safety ("DPS"). Champion was promoted to ALEA Trooper, Senior in September 2015 and remained in that position until his dismissal.

Following the pre-dismissal conference conducted on November 14, 2019, ALEA terminated Champion's employment, effective close of business November

15, 2019. *See* ALEA Exhibit 2 (dismissal letter dated November 15, 2019, signed by ALEA Secretary Hal Taylor). ALEA determined:

...

In a memorandum dated October 21, 2019, Colonel Charles Ward, Department of Public Safety Director, notified you of his recommendation that your employment with ALEA be terminated. The recommended termination was based on several charges of misconduct, which resulted in the violation of the following ALEA Policies and Procedures:

Charge I – Citizen Complaint alleging poor job performance and misconduct.

- Chapter 10 – Section II. General Work Rules (1)(a)4. Failure to perform job properly; to wit, DPS Policy Order 4-5 Traffic Crash Investigation and Reporting, Section II; and
- Chapter 10 – Section II. General Work Rules (1)(b)(10). Serious violation of any other agency rule; to wit, Chapter 10 – Section III. Professional Behavior and Conduct.

Charge II – Failing to perform job properly and unnecessarily jeopardizing the safety of the motoring public.

- Chapter 10 – Section II. General Work Rules (1)(a)4. Failure to perform job properly; to wit:
 - DPS Policy Order 1-0 Law Enforcement Code of Ethics, Section II – As a law enforcement officer, my fundamental duty is to serve the citizens of the State of Alabama; to safeguard lives and property...;
 - DPS Policy Order 1-7 Duties of an ALEA Trooper, Senior, Section III (B) – Investigations...; and
 - DPS Policy Order 4-5 Traffic Crash Investigation and Reporting, Section II... Upon arrival at the crash scene, position the patrol car in a manner which will provide for your safety and the safety of others, facilitate the

investigation of the crash, and create the least obstruction to the flow of traffic.

Charge III – Failure to submit weekly reports, enter time and attendance information into eSTART, and inventory paperwork by established deadlines.

- Chapter 10 – Section II. General Work Rules (1)(a)4. Failure to perform job properly; and
- Chapter 10 – Section II. General Work Rules (1)(b)2. Insubordination.

Charge IV – Leaving assigned area without supervisor approval.

- Chapter 10 – Section II. General Work Rules (1)(b)2. Insubordination...; and
- Chapter 10 – Section II. General Work Rules (1)(b)11. Leaving job station without permission.

Charge V – Failure to maintain state issued patrol vehicle.

- Chapter 10 – Section II. General Work Rules (1)(a)5. Abuse of equipment; and
- Chapter 10 – Section II. General Work Rules (1)(a)8. Violations of specific department rules; to wit:
 - Chapter 10 – Section X. Accountability for Property and Facilities – Any equipment issued or assigned to an Agency employee is the property of the State. There is not any individual proprietary interest in such equipment. It is available for maximum use and can be reassigned to other employees of the Agency as deemed appropriate. Employees are expected to protect and conserve all State property entrusted to them; and return all State property upon separation from the Agency; and
 - DPS Policy Order 6-5 – Non-Emergency Use and Maintenance of a State Vehicle (C) General Care and Maintenance – The appearance of equipment and personnel is a direct reflection of the Agency as a

whole. Therefore, each officer is responsible for maintaining their vehicle/vessel in a clean and presentable condition at all times and kept in good working order. Employees should consistently inspect his/her vehicle or vessel and report any damage to their supervisor immediately after detection. Additional equipment or modifications to ALEA vehicles or vessels must be approved in writing by the Division Chief. Any request for additional equipment or changes in equipment will be made in writing and submitted through the chain of command to the Division Chief's office.

Charge VI – Failure to comply with ALEA Personnel Policies and Procedures governing the Family and Medical Leave Act.

- Chapter 10 – Section II. General Work Rules (1)(a)1. Absenteeism – unexcused absences, unreported absences, a pattern of absences, or excessive absences.
- Chapter 10 – Section II. General Work Rules (1)(a)8. Violations of specific department rules; to wit, Chapter 9 – Section VII. Family and Medical Leave Act, as Amended (FMLA) (7) Employee Responsibilities (b) Leave Certification – All Agency employees are required to certify his/her need for FMLA leave within fifteen (15) days of receiving notice of such requirement. If an employee refuses to provide a certification, his/her leave request may be denied, and the employee may be disciplined.

Based on your status as a permanent merit system employee, a pre-disciplinary conference was scheduled and held on November 14, 2019. Stephen Tidwell, Protective Services Division Director, served as the Reviewing Officer and witnesses having direct knowledge of the incidents prompting the conference attended and responded to your questioning. You were allowed the opportunity to respond to each charge during the conference, expressing your disagreement with each charge and the recommendation your employment be terminated. After review and consideration, Chief Tidwell concluded, "Trooper Champion did not present any substantial evidence or witnesses that

would show justification for his actions referenced in the charge letter dated October 21, 2019. Based on the information provided, I concur with the recommendation of termination by [Colonel] Charles Ward and forward to Secretary Taylor for final decision on employment status with ALEA.”

After considering all available information, to include your overall work history, I find the preponderance of the evidence supports the recommendation that your service with the State be terminated at the close of business today, November 15, 2019.

...

Champion timely appealed his employment dismissal to the State Personnel Board and requested a hearing, pursuant to ALA. CODE § 36-26-27(a) (1975). In its Short Plain Statement of Facts, ALEA reiterated its charges against Champion and cited the same State Personnel Board General Work Rules and ALEA policies listed in the charge and dismissal letters.

A pre-hearing conference was held on November 27, 2019 and the parties mutually selected January 28, 2020 as the hearing date. The parties’ filed a joint motion to continue on January 14, 2020 and the hearing was rescheduled for April 7, 2020. Due to COVID-19 guidelines implemented in the State of Alabama and for the safety of the parties’, the hearing was ultimately re-set for June 10, 2020.

On June 10, 2020, the undersigned conducted a *de novo* hearing, at which *ore tenus* and documentary evidence was received.

II. FACTUAL BACKGROUND

Having reviewed the documentary evidence and having heard the testimony presented at the hearing and having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.¹

A. Employee's Personnel File²

Champion's annual performance appraisals while at ALEA reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
01/19	7.0	Partially Meets Standards
01/18	28.0	Exceeds Standards
01/17	12.0	Partially Meets Standards
02/16 ³	28.2	Exceeds Standards
05/15	32.7	Exceeds Standards
05/14	34.6	Exceeds Standards
05/13	10.3	Partially Meets Standards
05/12	35.5	Exceeds Standards
05/11	30.0	Exceeds Standards
05/10	19.4	Meets Standards
05/09	30.9	Exceeds Standards
06/08 ⁴	22.7	Meets Standards

¹ All references to exhibits and testimony are intended to assist the State Personnel Board in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

² See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

³ ALEA Trooper, Senior Final Probationary Performance Appraisal.

⁴ Trooper Final Probationary Performance Appraisal.

Champion's prior disciplinary actions include:

- A Reprimand on June 21, 2019 for Conduct Unbecoming.
- A 10-day Suspension from November 12, 2018 through November 23, 2018 for Failure to Perform Job Properly – specifically, failure to turn on his body camera pursuant to DPS Policy Order 6-9, Section V.
- A Reprimand on July 19, 2018 for Insubordination and Unexcused Absence.
- A Warning on June 4, 2018 for Appearance/Dress Code and a Counseling on the same date for Leaving Assigned Territory.
- A Counseling on February 8, 2018 for Appearance/Dress Code.
- A 3-day Suspension on June 27, 2016 for Failure to Perform Job Properly; Absenteeism; Insubordination; and Disruptive Conduct.⁵
- A Reprimand on May 22, 2015 for Disruptive Conduct and Insubordination.
- A Reprimand on May 23, 2013 for Insubordination.
- A Verbal Counseling on January 11, 2013 for Job Performance.
- A Reprimand on December 30, 2012 for Insubordination.
- A Reprimand on November 12, 2009 for Employee Conduct/Job Performance.
- A Verbal Counseling on September 30, 2009 for Insubordination.
- A Verbal Counseling on July 14, 2008 for Employee Conduct.

⁵ DOC Exhibit 2, "Notice of Recommended Termination of Employment" referred to this as a 5-day Suspension. Pursuant to Champion's Personnel File, he was only suspended for 3 days, from June 27, 2016 through end of business on June 29, 2016. If the suspension was aggravated up to a 5-day suspension, that paperwork was not found within the record of evidence. See also DOC Exhibit 13, page 10.

B. ALEA Policies/Procedures Forming the Basis of the Charges

ALEA Personnel Policies & Procedures, Chapter 10, Section II provides, in part:

(1) In addition to any special rules implemented by the various Directors for the guidance of their employees, the following standard general work rules shall apply to all Agency employees. The lists are not all-inclusive and there is no implication that discipline may not be imposed for other sufficient reasons. These rules are consistent with the Rules of the State Personnel Board, as amended, Chapter 670-X-19-.01.

(a) Violations that normally result in disciplinary actions of increasing severity:

1. Absenteeism – unexcused absences, unreported absence, a pattern of absences, or excessive absences.

...

4. Failure to perform job properly.

5. Abuse of equipment.

...

8. Violation of specific department rules.

(b) More serious violations that may result in suspension or discharge on the first offense.

...

2. Insubordination – Failure to follow an order; disobedience; failure to submit to authority as shown by demeanor or words, with the one exception of not following an

order the employee has good reason to believe is unsafe or illegal.

...

10. Serious violation of any other Agency rule.

11. Leaving job station without permission.

...

ALEA Policy Operations, Order Number 4-5, Traffic Crash Investigation and Reporting, states, in pertinent part:

I. PURPOSE

To establish policy and procedure concerning crash investigation and reporting procedures.

II. POLICY

Troopers are to proceed to a traffic crash scene, in a safe manner, as quickly as possible. In emergency situations, troopers will comply with the provisions of Title 32 pertaining to the operation of authorized emergency vehicles. **Upon arrival at the crash scene, position the patrol car in a manner which will provide for your safety and the safety of others, facilitate the investigation of the crash, and create the least obstruction to the flow of traffic if at all possible, keep the patrol unit in a position which will enable you to hear and transmit from your radio.** Give assistance to the injured, administering any first aid in accordance with techniques prescribed and taught by the department.

Make the crash scene as safe as possible, given the circumstances at the scene of the crash. Maintain control of spectators and bystanders at the crash scene, If hazardous materials are present, use precautions as necessary to prevent further disaster, such as prevention of cigarette smoking, evacuation, etc. Advise Post Headquarters as quickly as possible

if hazardous materials are present and instruct communications personnel to notify Highway Patrol Headquarters that hazardous materials are present.

Protect the property of persons involved. If it becomes necessary to take property into custody for safekeeping, make an inventory of all property you take and in the case of cash, jewelry, or other valuables. Attempt to have a witness present during the inventory.

The crash shall be investigated in accordance with procedure prescribed by the department. Techniques taught by the department will be used, and information will be recorded in compliance with the guidelines set forth in the eCrash Manual. The investigating officer will give Post Headquarters sufficient information to complete the crash log as soon as practicable. **The final report shall be completed in compliance with instructions given in the eCrash Manual. The investigating officer shall submit the completed report to the Post within three (3) days.** The Post Commander, or his designee, will review the completed report and all attachments for accuracy and approve within five (5) days of the crash. The Post-crash log will be initialed by the reviewing officer, indicating the date the report was approved...

ALEA Policy Operations & Administration, Order Number 1-0, Law Enforcement Code of Ethics states:

I. PURPOSE

To establish standards of conduct required of sworn officers employed by the Alabama Law Enforcement Agency.

II. POLICY

Sworn law enforcement officers (hereinafter, "Officers") employed by ALEA have a great privilege and responsibility to uphold a higher standard of conduct, on and off duty, which does not apply to regular, non-sworn employees. The lens of the microscope under which Officers work is intense with considerable attention and feedback being

offered by the general public, media outlets and the like, ' Therefore, ALEA has adopted the following Law Enforcement Code of Ethics as a general standard of conduct for all Officers to abide by in their professional and personal lives;

“As a law enforcement officer, my fundamental duty is to serve the citizens of the State of Alabama; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency, I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service, I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement."

ALEA Policy Organization & Administration, Order Number 1-7, Duties of an ALEA Senior Trooper, states, in pertinent part:

I. PURPOSE

To establish the duties and responsibilities of an ALEA Senior Trooper assigned to the Department of Public Safety.

II. POLICY

The primary duty of an ALEA Senior Trooper is to protect the life and property of the public through the enforcement of State and Federal laws within the State of Alabama. They must possess adequate physical and mental stamina to perform prescribed duties.

Senior Troopers must exercise discretion, courtesy, tact, firmness, and sound independent judgment while performing their duties. Senior Troopers shall provide leadership and counsel for other Senior Troopers and by their own bearing and conduct; they will set an example for these Senior Troopers. Troopers may be called on twenty-four hours a day and may be required to travel frequently. It may become necessary for Troopers to be away from home for extended periods of time. Troopers must accept assignments anywhere in the State.

Senior Troopers must be emotionally stable and willing to tolerate the physical discomforts and dangers inherent in the work. Senior Troopers must be fully competent when performing all assigned duties. A Senior Trooper must also have the initiative and desire to faithfully serve the public and to undertake the implied duties of an ALEA Senior Trooper assigned to the Department of Public Safety.

...

III. PROCEDURES

...

Senior Troopers are thoroughly familiar with their assigned territory. Senior Troopers patrol roads, highways, and waterways as assigned, enforcing applicable laws, regulations, rules, and administrative policy and rendering assistance to motorists/boaters. They will issue arrest citations or warning tickets as needed. Senior Troopers will investigate traffic/boating crashes in accordance with ALEA, Division, and Personnel policy. Senior Troopers will perform routine patrol duties in compliance with Divisional policy. Senior Troopers will also complete any additional assignments as directed by supervisors.

A. Administrative

Senior Troopers shall properly complete all paperwork including activity reports, arrest citations, warning tickets, driver assist forms, and accident reports. Reports and forms must be submitted in a timely manner, to the proper authority, as required by statute or regulation. When directed by supervisors, any other forms, reports, documents or correspondence assigned to the Senior Troopers, will be completed in the manner described above.

B. Investigations

Senior Troopers will investigate all vehicle/vessel crashes they are assigned to investigate. In addition, they will investigate complaints received regarding hazardous roadway conditions or other hazardous situations. Senior Troopers will assist other agencies with their investigations as required or when directed to do so.

C. Maintenance and Supply

A Senior Trooper shall maintain all state issued equipment in good condition mid report any disrepair or malfunctions to his/her supervisor immediately. Senior Troopers will maintain an appropriate

amount of expendable operating supplies.

...

ALEA Policy Operations, Order Number 4-16, Emergency Vehicle Operations, states, in pertinent part:

I. PURPOSE

To establish ALEA policy for emergency vehicle operations in order to maximize the safety of the motoring public and ALEA personnel.

...

XIV. EMERGENCY RUNS

- A. When sworn officers are required to make an emergency run, they will use their blue light and siren.
- B. The officer will notify the local Post by radio immediately, giving location and reason for making the run. The station will also be notified of the termination of the run.
- C. Even though an emergency run may exist, an officer will be held responsible for reasonable and safe operation of the vehicle at all times.

ALEA Policy Equipment, Order Number 6-5, Non-Emergency Use and Maintenance of a State Vehicle, states, in pertinent part:

I. PURPOSE

To establish specific guidelines outlining the proper methods to be used in the assignment, operation and maintenance of vehicles and/or vessels issued to sworn personnel.

II. POLICY

...

C. General Care and Maintenance – The appearance of equipment and personnel is a direct reflection of the Agency as a whole. Therefore, each officer is responsible for maintaining their vehicle/vessel in a clean and presentable condition at all times and kept in good working order. Employees should consistently inspect his/her vehicle or vessel and report any damage to their supervisor immediately after detection. Additional equipment or modifications to ALEA vehicles or vessels must be approved in writing by the Division Chief. Any request for additional equipment or changes in equipment will be made in writing and submitted through chain of command to the Division Chief's office.

ALEA Personnel Policies & Procedures, Chapter 9, Section VII provides, in part:

(7) Employee Responsibilities

...

(b) Leave Certification – All Agency employees are required to certify his/her need for FMLA leave within fifteen (15) days of receiving notice of such requirement. If an employee refuses to provide certification, his/her leave request may be denied and the employee may be disciplined.

...

C. Facts Forming the Basis of Dismissal⁶

⁶ The incidents in this recommendation are not ordered chronologically; they are ordered the same way the evidence was ordered in ALEA's exhibit book and discussed on the transcript.

June 12, 2019 Incident:

On June 12, 2019, at approximately 6:50 p.m., Champion responded to a two-vehicle accident on Mitchell Creek Road in Elmore County. When he arrived on the scene, Troy McKinley (“McKinley”) was standing next to his 1975 Volkswagen Allison Dune Buggy. The Dune Buggy had a gaping hole in it’s front hood. The driver of the second vehicle, Donald Norrell (“Norrell”), left the scene of the accident. An Elmore County Sherriff’s Deputy was on the scene talking with McKinley about the accident. Once Champion arrived on the scene, the Deputy left to try and find Norrell. Champion activated his body camera while he was on his way to the accident.⁷

After speaking with McKinley around McKinley’s Dune Buggy and away from his body camera, Champion returned to his patrol vehicle and started to fill out a crash report on the eCrash system.⁸ After approximately 20 minutes of working in his patrol car, Champion’s body camera captured the following conversation between Champion and McKinley:

Champion: “Are you sure you want a wreck report?”

McKinley: “You think that would mess with my insurance?”

⁷ ALEA Exhibit 6.

⁸ Champion mounted his body camera in his patrol car.

Champion: "It's a claim...what we probably need to do is just get you [Norrell's] information and let you do it in small claims. I'll document it and testify that I did work a wreck out here. That would be better for you."

McKinley: "Okay."

Champion: "Yep. You wanna do that?"

McKinley: "Yeah, sounds good to me."

Champion: "I'll delete this wreck report. Wreck reports are never good. It is something on your record, you do that, then you hit a deer and a couple of other things and the next thing you know your rate goes up."

McKinley: "How will ya'll find [Norrell]?"

Champion: "Well I won't if you don't get a wreck report. But I'm going to give you his information and you can take that down to the Clerk's Office, in small claims, and it will cost you \$75.00."

McKinley: "So, if we don't do a wreck report, nothing will happen to [Norrell]?"

Champion: "Well, let me tell you this..."

McKinley: "Do a wreck report!"

Champion: "Well hold on, let me tell you this, you'll have to sign a warrant on him."

McKinley: "Okay, so I will."

Champion and McKinley continued their discussion. During the discussion, McKinley made it clear he wanted Norrell to suffer as significant consequences as

possible since Norrell left the scene of the accident. Champion communicated to McKinley he started the crash report but would not submit it until McKinley decided how we wanted to proceed. Champion gave McKinley his cell phone number and told him to call him anytime.

On Monday, July 1, 2019, McKinley texted Champion and asked him to call him.⁹ On Thursday, July 4, 2019, McKinley texted Champion and asked if he could go to Champion's residence to pick up the documents [wreck report] out of Champion's mailbox. Champion responded by asking McKinley to provide McKinley's drivers license, McKinley's tag number, McKinley's wife's date of birth, and the other drivers information.¹⁰ McKinley texted that information to Champion the same day. Three days after providing Champion with the requested information, McKinley texted Champion again and stated, "Let me know when I can get that paperwork...I want to get this wrapped up tomorrow...Thanks."¹¹ Champion responded by texting:

We are having some very serious miscommunication issues as it pertains to the minor damage to your Volkswagen Dune Buggy. This should have been handled a few minutes at the scene. I offered you the "Incident/Offense report" option instead of a crash report which is more work on me but I was willing to go above and beyond. To the extent I would do it while I was

⁹ ALEA Exhibit 5, page 12.

¹⁰ ALEA Exhibit 5, pages 12-14.

¹¹ ALEA Exhibit 5, page 14.

on sick leave or on my off days. You want to prosecute the guy because his trailer hitch broke a small hole in your fiberglass dune buggy. On the day of the crash I did not make contact with the suspect because dispatch told me to return to Montgomery County before I completed my investigation. We had a conversation and I wanted to get you everything ASAP. You are dragging your feet and it has been a huge inconvenience to Me and my agency Alea. I have told ...4th of July but would not answer the phone when I called you back. I was off yesterday and today because my youngest son who is serving full time in the Marine Corps got to come home for 2 days. You have not followed up with me on two occasions. I called you two days ago you never called me back! You also rudely hung up on me. You need to make an effort to call me tomorrow after 2pm and it will be done. With that said a supervisor will have to approve it. If this is any inconvenience to you I will simply do a wreck report and this will all be over with. If you have any questions call me, my immediate supervisor Cpl. Day or The Sergeant. You indicated you have a close relationship with the Post Sergeant so I made him aware of your situation. My email address is joseph.champion@alea.gov. (all lower case) Address any further communications via email. No more calling me or texting. With that said I will diligently help you any way I can.

On July 8, 2019, McKinley filed a complaint against Champion with Post Sergeant Steve Jarrett (“Jarrett”).¹² Champion never completed the wreck report. Jarrett completed the wreck report and gave it to McKinley.

During the hearing, Chief Susanna K. Capps (“Chief Capps”) testified on behalf of ALEA. Capps testified that pursuant to her review of the radio

¹² ALEA Exhibit 5, page 1.

logs and the video, Champion had all the necessary information to complete a crash report on the scene. Capps elaborated in her testimony that Troopers are required to do a crash report. Capps testified Champion had the necessary equipment to fill out a crash report on the scene. Capps pointed out Champion can be seen in the video filling out a crash report in his car while at the scene with McKinley.

Capps watched Champion's discussion with McKinley on the body camera footage around 53 minutes and 46 seconds of ALEA Exhibit 6 and explained that Champion's suggestion that McKinley file in small claims court and avoid a crash report was improper. Capps testified Champion was supposed to get the wreck information and fill out a crash report. Capps testified McKinley attempted to get an incident/offense report so he could pursue charges against Norrell for leaving the scene of an accident. Capps also testified in order for the crash to be properly documented, an Alabama Uniform Crash Report had to be completed. Capps summarized that an I/O report was not proper in this instance since a crash did occur, therefore a crash report had to be completed. Champion did not complete a crash report on this incident.

Capps also testified Champion's text messages with McKinley, specifically where Champion alleged McKinley was dragging his feet, was

inappropriate since Champion should have completed the crash report on June 12, 2019 when he worked the wreck. Capps summarized that Champion's failure to complete the crash report and his unsolicited advice to McKinley concerning small claims court, in lieu of the crash report, violated ALEA's Professional Behavior and Conduct Policy. Capps also testified Champion's actions during this incident were not consistent with ALEA training.

On cross-examination, Capps testified Troopers have discretion at the scene of an accident as to whether they issue a citation, however, Troopers have no discretion and must investigate the accident and complete a crash report.

Capps testified Troopers have Academy training and an additional 10-week training wherein they learn how to approach, investigate and report traffic accidents. Capps testified there is also 12 hours of in-service training, annually.

June 2, 2019 Incident:

On June 2, 2019, at approximately 6:30 a.m., Champion arrived on the scene of an accident between two tractor-trailers on Interstate 65 ("I-65"). This particular stretch of I-65 had two Northbound lanes and two Southbound lanes. The accident occurred in the Southbound left lane. The first Tractor Trailer vehicle Champion approached was stopped in the left lane of traffic.

Champion drove up parallel to the cab of the tractor-trailer in the right-hand emergency lane. Champion's patrol car blue lights were on and flashing. Champion rolled his window down and is seen talking to the driver of the first tractor-trailer while cars passed between them.¹³ The driver was standing in front of his stalled vehicle. The driver then walked across the traffic and stood at Champion's window as the two talked; his back to moving traffic. The driver returned to his vehicle, again crossing an active lane, and Champion then drove further South to speak with the driver of the second tractor-trailer; leaving the first vehicle without traffic control behind it.

Champion spoke to the second tractor-trailer driver for almost an hour. The driver complained of back pain but stated he was not sure if it was a result of the accident or another issue. Champion did not call a medical unit to come to the scene to check out the driver of the second tractor-trailer.

Ultimately, a wrecker driven by David Andrews ("Andrews") from Randy's Wrecker Service showed up to tow the first tractor-trailer unit. Andrews approached Champion and stated, "Boss, I need you back here behind me. There's been four people almost run all over that son-of-a-gun since I've been here." Champion returned to the scene of the first tractor-

¹³ ALEA Exhibit 8.

trailer vehicle but again parked in the emergency lane next to the tractor-trailer and not behind it. Andrews filed a written complaint explaining the dangers on the roadway that day and shared how a Toyota Tundra had to drive into the median to avoid hitting the tractor-trailer.¹⁴

Champion was questioned about the incident and stated, "Putting my patrol car directly behind the disabled truck would not add to the safety of anyone at the scene in the event my patrol car was struck it would push me under the commercial truck...Parking a patrol car displaying emergency lights directly behind a disabled truck is a danger to the officer...There was never a time motorist would not have seen my blue lights. Had I parked behind the truck eventually traffic could have backed up blocking my car completely."

Capps testified about the incident during her testimony at Champion's appeal hearing. Capps testified that when Champion first arrived on the scene he should have positioned his patrol car behind the tractor-trailer that was broken down in the left lane and angled his car so if it was struck by another car, his patrol vehicle would be pushed into the median of the highway.¹⁵ The

¹⁴ ALEA Exhibit pages 12 and 13.

¹⁵ Capps testified Troopers are trained to position their patrol cars behind vehicles broken down in active lanes of traffic. Champion positioned his car in the right-hand emergency lane. Champion expressed concern over the possibility of getting hit by a motorist and his car being pushed under the tractor-trailer in a written statement he provided in response to questions about his body camera footage. Capps testified angling a patrol car is pursuant to training and the car should be parked far enough behind the broken-down vehicle that there is little risk of the car being pushed under.

video showed that initially the tractor trailer had his hazard lights on. Champion instructed the tractor-trailer driver to turn his hazard lights off to preserve the battery.¹⁶ Capps also noted that Alabama passed the “move over” law which requires vehicles to slow down and get as far away from the lights as possible. Champion created an unsafe environment for motorists who saw his blue flashing lights on the right shoulder since the law requires motorists to slow down and move as far left, in this case, as possible; into the lane where the disabled tractor-trailer was sitting.

Capps also pointed out Champion never left his patrol car to inspect the damaged tractor-trailer or get the driver’s information; rather, Champion had the driver walk across an active lane of traffic to present his information to Champion who remained in his patrol car. Capps testified Champions action with regard to the first tractor-trailer was not compliant with training.

Capps acknowledged Champion drove his patrol car to the second tractor-trailer which resulted in no warnings for oncoming motorists approaching the first tractor-trailer broken down in the left lane because Champion’s lights went with his vehicle to the second tractor-trailer and

¹⁶ Capps concluded the battery life of the tractor-trailer was inconsequential since the driver could not restart his engine. The hazard should have remained flashing.

Champion instructed the first driver to turn off his hazard lights. Capps testified these actions were not consistent with Trooper training.

Capps indicated the driver of the second tractor-trailer was heard complaining of a hurt back on Champion's body camera footage. Champion asked the driver if his hurt back was a result of the wreck and the driver indicated it did not hurt before. The driver told Champion he would have it checked out. Champion did not notate an injury on the crash report and did not call for the driver to be evaluated. Capps testified a driver does not have to be transported for an injury to be notated on the crash report; it should have been notated in this case. Capps testified Champion's interaction with the driver of the second tractor-trailer was not consistent with training; specifically, the driver complained of an injury as a result of the crash and Champion should have asked the driver if he wanted someone to come assess any potential injury and Champion should have notated the injury remark on the crash report.

On cross-examination, Capps testified Policy #4-5 instructs Troopers on how to deal with a traffic accident. Capps acknowledged Troopers have judgment calls to make in the field. Capps clarified policy instructs Troopers not to obstruct traffic.

June 20, 2019 Incident:

On June 20, 2019, Champion received a call regarding a property crash on Interstate 65. Capps testified this was not an emergency situation because there was only property damage to a vehicle, no injuries. Prior to Champion's arrival there were other law enforcement personnel on the scene of the crash. Champion drove his patrol car with flashing blue lights to the scene driving the wrong way, against the flow of traffic, down I-65 in the emergency lane on the shoulder of the road. Capps testified that since this was only a property crash there was no need for Champion to drive the wrong way down Interstate 65. Capps testified there were alternate, safer routes Champion should have utilized. During his drive, Champion drove across an exit ramp the wrong way and also drove around a blind curve where the exit ramp started. Capps testified Troopers are required to observe the rules of the road. Capps clarified that pursuant to State law, Troopers are permitted to speed and run lights as long as they have sirens on, blue lights flashing and utilize "due regard" for others during emergency runs. Capps testified on non-emergency runs; Troopers are supposed to follow the rules of the road. Capps concluded his failure to use the emergency lane was not compliant with training. Capps also concluded, the danger to the public in this instance was not warranted since it was a non-emergency run.

Champion took two individuals from the property crash to another vehicle further down Interstate 65 that was parked on the left shoulder of the road close to a guardrail. Champion pulled his patrol car up to the vehicle, positioning his car in the far-left lane next to the car on the shoulder and permitted the individuals to exit his patrol car and get into the vehicle against the guard rail. Capps did not believe Champion used good judgment since he stopped in the "fast lane" when he had an emergency lane he could have parked in to let the passengers out. On cross-examination, Capps indicated she could not see whether Champion's lights were flashing. Capps estimated Champion's speed of travel on the shoulder of the road, driving the wrong way was approximately 25-30 miles per hour. Capps testified the focus of her analysis of this incident was on Champion's judgment. Capps clarified Troopers are given a lot of training on how to determine and use good judgment. Capps concluded Champions actions were not in compliance with training.

eSTART:

Capps testified she reviewed documentation regarding Champion's failure to timely submit weekly reports and time and attendance records in eSTART.¹⁷ Capps testified ALEA employees are responsible for timely

¹⁷ Capps identified ALEA Exhibit 9 as the documentation she reviewed.

submitting their time worked through the eSTART system. Capps indicated the Administrative Support Assistants (“ASA’s”) at the various Posts around the State can assist the Troopers with putting their time worked into eSTART. Even though the ASA’s can fill in the time worked, the Troopers still have to review and approve the information before it can be submitted. As of July 4, 2019, Champion failed to update his eSTART since June 23, 2019.

Capps testified on cross-examination that the Dodge cars had issues with the eSTART system; not with the functionality of the system, but rather font type issues and image orientation (portrait to landscape and vice versa) that ALEA’s internet technology division had to address and fix. Capps testified she was unaware whether Champion had any other issues with his eSTART system. Capps also testified Troopers were given an in-service class on eSTART when it first came out in 2006 or 2007. Capps also knew of issues with the U-Connect in some of the Charges related to eSTART. The connection was in the Dodge Charger trunks. Capps testified Troopers are issued a mifi so they can complete reports and submit them over a mobile connection.

Weekly Reports:

Each week, Troopers are supposed to fill out and submit an AST-35 weekly report. This report details the daily activities of the Troopers including

mileage and incidents. The Troopers submit their information to the Post, it is reviewed and then given to the ASA's to be placed in a database to track all the pertinent information for peer review and to check mileage on vehicles. Capps testified that information is also matched with the timecards when needed. Capps indicated these documents are part of a Troopers daily activities. Champion failed to timely submit his Weekly Report covering June 22, 2019 to June 28, 2019.

Inventory:

Capps testified she also reviewed the documentation pertaining to a June 13, 2019 email sent from ALEA Services Division Chief Clay Barnes requesting all ALEA employees to complete an Annual Department Inventory by July 12, 2019. That email was forwarded to all Troopers within the Montgomery Post by Sergeant Jarrett, with a deadline of July 3, 2019. Champion was the only Trooper at the Montgomery Post to fail to complete the inventory timely.

Capps testified that part of Champion's job performance is timely submitting weekly paperwork, time and attendance, and other items as requested.¹⁸ Champion received notification of the time frames and was

¹⁸ ALEA Exhibit 4, page 9.

reminded on numerous occasions. Champion failed to adhere to the instructions.

August 15, 2019 Incident:

On or about August 15, 2019, Champion was assigned to work Montgomery and Lowndes County from 4:00 p.m. until 12:00 a.m. At approximately 10:09 p.m., Champion went to his home in Elmore County and informed dispatch he was out of service, subject to call. At approximately 12:00 a.m., Champion contacted dispatch stating he was off-duty. Capps testified Troopers are supposed to remain in their area(s) of patrol until their shift is over. Capps also testified Troopers are supposed to remain in uniform until the end of their shift. Champion did not request permission to leave Montgomery or Lowndes County to work from home. When questioned, Champion reminded his supervisors he had broken a rib a few days before and it was difficult for him to wear his vest and gun belt, so he worked out of his car with just a T-shirt on.¹⁹ Capps testified Champion should have called in sick if he could not do his job effectively. Capps also testified ALEA has “light duty” opportunities for Troopers that request such an accommodation due to injury.

¹⁹ ALEA Exhibit 1, page 10; *see also* Exhibit 10, page 4.

Capps concluded her testimony by explaining that while Troopers have discretion, that discretion is not unlimited, and their actions must comply with the policies, procedures and training provided by ALEA.

FMLA:

Stan Goolsby (“Goolsby”), Director of ALEA Personnel, also testified at the hearing. Goolsby testified he was aware of the charges against Champion. Champion applied for leave pursuant to the Family and Medical Leave Act (“FMLA”) in August 2019. Champion’s doctor submitted appropriate paperwork to ALEA’s Personnel Department and Champion was approved for FMLA leave during parts of August and September 2019. Champion had protected absences from September 3, 2019 through September 22, 2019. Based upon Champion’s extended absence from ALEA, ALEA retrieved Champion’s patrol vehicle from his residence. The vehicle was in an unacceptable state or disarray.²⁰ Policy Order 6-5(c) stipulates how patrol vehicles should be maintained. Goolsby testified Champion’s vehicle was not compliant with Policy Order 6-5(c).

In addition to Champion’s vehicle condition, Champion requested additional leave through FMLA on or about September 17, 2019. ALEA’s personnel department submitted Champion’s request to the Montgomery Post

²⁰ ALEA Exhibit 11.

and the paperwork was forwarded to Champion to complete. Goolsby testified that pursuant to ALEA's FMLA policy, Champion had 15 calendar days to return the appropriate FMLA paperwork back to ALEA's personnel department. The policy was written on the paperwork given to Champion.

Champion called the ALEA personnel department and spoke to an employee, communicating to her that he knew he would miss his deadline but told her that he had a doctor's appointment on October 4, 2019 and would send the paperwork immediately afterwards. According to Goolsby, ALEA never received the additional paperwork on Champion's request for additional FMLA leave.

On or around October 18, 2019, Goolsby notified Champion that because his paperwork was not submitted, he was denied additional FMLA leave. Goolsby concluded his testimony by clarifying that after the September 22, 2019 expiration of FMLA leave, Champion did not return to work and his absences were considered unexcused absences, a violation of ALEA rules.

Goolsby testified that simultaneously to delivering Champion the rights and responsibilities notice from ALEA on FMLA, the decision was made to go ahead and retrieve Champion's patrol vehicle. Goolsby acknowledged Champion was not told beforehand that ALEA was going to retrieve his patrol vehicle. Goolsby clarified that the policy dictates the vehicle should have

been kept clean regardless of notice from ALEA. Goolsby then testified that Management has discretion on whether to implement discipline based upon the condition of the vehicle.

Champion chose not to testify at the hearing and tell “his side of the story.”

III. ISSUE

Did ALEA produce sufficient evidence to warrant dismissal of Champion?

IV. DISCUSSION

Standard of Review

The purpose of the administrative appeal is to determine if the termination of the employee’s employment is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So. 2d 345 (Ala. Civ. App. 1986); *Thompson v. Alabama Dept. of Mental Health*, 477 So. 2d 427 (Ala. Civ. App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So. 2d 658 (Ala. Civ. App. 1980). In *Earl v. State Personnel Board*, 948 So. 2d 549 (Ala. Civ. App. 2006), the Alabama Court of Civil Appeals reiterated:

“[D]ismissal by an appointing authority ... is reviewable by the personnel board **only** to determine if the reasons stated for the dismissal are sustained by the evidence presented at the hearing.”

Id. at 559, quoting *Johnston v. State Personnel Bd.*, 447 So. 2d 752, 755 (Ala. Civ. App. 1983).²¹

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a "preponderance of the evidence." The law is well settled that a "preponderance of the evidence" standard requires a showing of a *probability* that the employee is guilty of the acts as charged. **Thus, there must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue.** The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. *See Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S. Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a "significant possibility" falls far short of the Administrative Procedure Act's preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).²²

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. "Substantial evidence has been defined as such 'relevant evidence as a reasonable mind might accept as

²¹ The Alabama Court of Civil Appeals went further to hold: "both this court and the circuit court must take the administrative agency's order as 'prima facie just and reasonable' and neither this court nor the circuit court may 'substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.'" *Id.* at 559, citing ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So. 2d 560, 562 (Ala. Civ. App. 1995).

²² In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

adequate to support a conclusion,’ and it must be ‘more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.’” *Alabama Alcoholic Beverage Control Bd. v. Tyson*, 500 So. 2d 1124, 1125 (Ala. Civ. App. 1986).

In the present case, ALEA provided substantial evidence that Champion violated multiple ALEA Policies and Work Rules. Specifically: (1) Charge I, Champion violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(a)(4) Failure to perform job properly, by failing to complete a crash report on the June 12, 2019 wreck involving McKinley pursuant to DPS Policy Order 4-5, which provides an officer 3-days to submit a completed report to the Post for review. In this case, Champion never completed the crash report. Furthermore, Champion violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(b)(10) Serious violation of any other agency rule, by offering advice to McKinley about alternatives other than having a crash report filled out. Capps testified this action was inconsistent with training and Champion was not authorized to offer “legal” advice but rather was supposed to complete a crash report. (2) Charge II, Champion violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(a)(4) Failure to perform job properly, by failing to position his patrol car behind the broken down tractor-trailer in the left-hand lane of the interstate, endangering the public by parking his patrol car in the right-hand emergency lane with lights flashing which would

cause vehicles to “move over” into the lane of the stalled tractor-trailer, endangering the safety of the driver of the first tractor trailer by having him cross an active lane of traffic to speak with Champion and having the driver stand next to Champion’s patrol car while his back was to the only active lane of traffic at that time. Champion further instructed the driver of the tractor-trailer to turn off his hazard lights. Also, the driver of the second tractor-trailer complained of back pain which Champion failed to notate on his crash report. These actions also violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(b)(10) Serious violation of any other agency rule, since Champion’s actions violated DPS Policy Order 1-0, DPS Policy Order 1-7, and DPS Policy Order 4-5. Champions actions that day were serious because he endangered the safety of others. Champion exhibited similar conduct on June 20, 2019 when he was reporting to a property-type crash. This crash was not an emergency; however, Champion endangered the lives of the motoring public by driving against traffic in the emergency lane and crossing at least one off-ramp moving in the wrong direction and around a blind curve. Champion also failed to use his siren. DPS Policy 4-16 requires emergency runs to include lights and sirens. Ala. Code §32-5A-7 permits drivers of emergency vehicles to disregard certain regulations governing the direction of movement when responding to an emergency call. The call on this date was not an emergency. Once Champion arrived on the scene, he picked up passengers to return them to their vehicle which was parked on

the inner shoulder of the interstate further down. Champion parked his patrol car in the left-hand lane on the interstate with lights on instead of parking in the emergency lane with lights on, thereby unnecessarily endangering the safety of his passengers and himself. (3) Charge III, Champion violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(a)(4) Failure to perform job properly and (1)(b)(2) Insubordination, by failing to complete his weekly reports and time and attendance into eSTART in a timely manner and pursuant to the instructions he received via e-mail. The testimony indicated Champion was the only Montgomery Post Trooper who failed to meet the deadline. (4) Charge IV, Champion violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(b)(2) Insubordination and (1)(b)(11) Leaving job station without permission, by leaving his assigned post (Montgomery and Lowndes) on August 15, 2019, when he returned to his home address at 10:00 p.m. and stayed there for the remainder of his shift, out of uniform. (5) Charge IV, Champion violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(a)(5) Abuse of equipment, and (1)(a)(8) Violations of specific department rules when his car was retrieved by members of the Montgomery Post after Champion went on extended leave and the appearance of the interior and exterior of his vehicle was in violation of DPS Policy Order 6-5 and ALEA Personnel Policies & Procedures, Chapter 10, Section X. (6) Charge VI, Champion requested and was approved for FMLA leave from September 3, 2019

through September 22, 2019. Champion applied for an extension of his FMLA leave on or about September 17, 2019. ALEA provided Champion with guidance and informed Champion he had 15 days to return the required paperwork. Champion failed to return a doctor's certification and therefore, violated ALEA Personnel Policies & Procedures, Chapter 10, Section II (1)(a)(1) Absenteeism and (1)(a)(8) Violations of specific department rules, ALEA Personnel Policies & Procedures, Chapter 9, (7) Employee Responsibilities (b) Leave Certification.

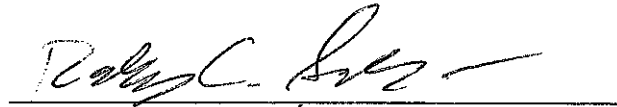
Champion was previously disciplined up to and including suspension. Several of Champions violations jeopardized the safety of the public, and the body camera video depicted Champion more concerned with his own safety and comfort rather than those relying on his protection.

The undersigned carefully considered mitigation in this case. The undersigned finds no grounds for mitigation exist justifying a lesser disciplinary action than dismissal. Champion chose not to testify and therefore did not afford the Personnel Board insight into the decisions he made and how his choice of discretion in these events were within ALEA policy and training, if at all.²³ Accordingly, the undersigned finds the totality of the evidence warrants dismissal in this cause.

²³ This was particularly troubling since the purpose of an employee dismissal appeal hearing is to provide the employee an opportunity to "tell his side of the story."

Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done, this 16th day of July 2020.



RANDY C. SALLÉ
Administrative Law Judge
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
Facsimile: (334) 353-9901

VIA E-MAIL AND FIRST-CLASS U.S. MAIL

John D. Norris, Esq.
P.O. Box 241
Millbrook, Alabama 36054
Telephone: (334) 285-0682
E-mail: norrisj@bellsouth.net

Noel Barnes, Esq.
Erin Dunagan, Esq.
Michelle Cone, Esq.
Alabama Law Enforcement Agency
201 South Union Street, Suite 300
Montgomery, Alabama 36130-4115
Telephone: (334) 517-2889
Facsimile: (334) 242-0894
E-mail: noel.barnes@alea.gov